IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 959 of 1992

For Approval and Signature:

HONOURABLE MR.JUSTICE C.K.BUCH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NATWARLAL MOHANLAL ZALA - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
MR KB ANANDJIWALA for Appellant(s) : 1,
MS DARSHANA PANDIT, ADDL. PUBLIC PROSECUTOR for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE C.K.BUCH

Date : 29/03/2007

CAV JUDGMENT

1. The present appeal is filed by the appellant-accused under section 374 R/w section 386 of the CrPC challenging the legality and validity of the judgment and order of

conviction and sentence passed by the ld. Special Judge, Ahmedabad (Rural) in Special Case No. 5/1987 dated 01.09.1992. The ld. Special Judge convicted the appellant (hereinafter referred to as the accused) for the offences punishable under section 5(i)(d) R/w section 5(2) of the Prevention of Corruption Act (hereinafter referred to as the Old Act) and sentenced him to undergo R/I for 6 months and to pay a fine of Rs.700/- I/d to undergo S/I for 3 months. The accused has been held guilty of the charge of the offence punishable under section 151 of Indian Penal Code. However, no separate sentence has been awarded.

2. The charge has been framed against the accused vide exh.24. Prior to framing of the charge, original accused No.2 submitted one application before the trial court praying discharge from the charges leveled against him stating that he was a Police Patel popularly known as “Mukhi” of village Magodi of Taluka Gandhinagar. There is no role attributed to him on the day of acceptance of the amount and he has been wrongly chargesheeted merely on suspicion and there is no prima facie case against him of his involvement in the so-called agreement for acceptance of the bribe amount or actual acceptance thereof. His application was decided by the ld. Special Judge by speaking order on 05.01,1988 and accused No.2 was asked to face trial and after appreciating the oral as well as

documentary evidence led during the course of the trial, the ld. Special Judge, vide impugned judgment, decided to acquit the accused No.1 and held appellant accused No.1 guilty and convicted and sentenced him as aforesaid vide impugned judgment.

3. Mr. Anandjiwala, ld. Counsel appearing for the accused has taken me through the impugned judgment and so also through various grounds of challenge mentioned in the memo of the appeal.

4(i) To appreciate the rival contentions, firstly it would be proper to state the short facts of the case placed by the prosecution. According to prosecution, on 01.12.1985, there was some quarrel between the brother of the complainant Pratapji and one Lakhabhai Danabhai Patel and labourers in the field regarding taking the grass from the field. Regarding that incident, one criminal complaint was lodged for the offences punishable under sections 323, 506(2) etc. of Indian Penal code against three persons namely Babuji, Badarji and Parbatji at about 11.00 a.m. The appellant, in reference to that complaint had gone to village of the complainant i.e. village Magodi and in connection with the investigation of that complaint and to effect arrest of the accused named in the complaint. It is alleged that the accused asked the complainant to call all the three brothers of

the complainant so that he can arrest them. Thereupon, the complainant requested the accused that his brothers are not at home and had gone to the field for the purpose of watering the standing crop, but the accused had insisted for calling his three brothers. When the complainant was requesting repeatedly to the accused not to effect the arrest, the accused decided not to insist for the presence of their brothers, but demanded Rs.1000/ by saying that if Rs.1000/ are paid, he would not arrest his brothers. He further told the complainant that this amount of Rs.1000/ be paid to him immediately or latest by tomorrow morning i.e. 02.12.1985 in the panchayat office. He also informed the complainant that he is staying over-night in the village and the complainant should see that his three brothers remain present. When this demand was made and the complainant was informed by the accused that he is staying over-night at village itself in panchayat office, the accused No.2 Mukhi Baldevbhai (original accused NO.2) was present and thereafter both of them had left the place. On the next day i.e. on 02.12.1985, complainant went to the house of one Shanabhai Manabhai Harijan for loan of the amount, but this Shanabhai managed to arrange some amount and ultimately it was decided to give Rs.600/ to the accused. Thereafter, in the afternoon, on 02.12.1985, the complainant and his three brothers went to panchayat office and accused was there. After calling the

complainant, his three brothers and along with some other villagers, they went to Chiloda cross-roads along with uncle of the complainant namely Umedsingh in one truck and they were sitting at one hotel and there the accused demanded the amount. As the amount of Rs.600/, in the meanwhile was arranged, that amount was paid to the accused. The accused accepted that amount saying that he was to bring Rs.1000/ and why he had brought Rs.600/ only? The complainant in turn requested the accused to accept this much of amount stating that he could arrange only for that much amount and so said amount of Rs.600/ was accepted by the accused. At that time, accused told the complainant to bring Rs.200/ on th next day i.e. on 03.12.1985. The complainant told the accused that he would not be in a position to arrange for Rs.200/. However, it may be possible for him to bring and pay Rs.100/ only. It was also decided that the complainant would bring his all the three brothers i.e. the accused named in the complaint, at Gandhinagar Court so that in the Court, necessary arrangements for bail can be made there in the Court and the brothers of the accused may not have to suffer any actual confinement after formal arrest.

(ii) It is the case of the complainant that on 03.12.1985, he approached the office of Anti Corruption Bureau (ACB for short) for the purpose of lodging a complaint and after lodging the complaint, two panchas

were called from the office of Regional Transport Office (RTO for short) and thereafter, the first part of the panchanama was drawn. Formalities of applying anthracene powder on muddamal currency notes were completed by raiding party with the help of the staff members and as members of the first part of the panchanama, raiding party left for Gandhinagar. The Court at Gandhinagar was located in Sector 30. The complainant with panch No.1 and members of the raiding party had reached sector No.30, Gandhinagar at 2.30 p.m. Thereafter, the accused called one Chetanbhai Solanki, an advocate practising there. The advocate was instructed to fill up three bail bonds and arrange for bail. The accused thereafter with the complainant and panch No.1 went to the tea-stall of one Bachubhai Shah. The accused occupied the chair and demanded the bribe amount. On demand, the complainant took out the currency notes of Rs.50/ each from the pocket of his bushirt and handed over to the accused. The accused accepted that amount by his right hand and put the muddamal currency notes in the pocket of his bushirt having a flap on the pocket. On acceptance, signal was given and ultimately the accused was trapped by the members of the raiding party at the place near the tea-stall of Mr. Bachubhai Shah. Thereafter, formalities of drawing of panchanama of the second part were completed and after investigation, the accused came to be chargesheeted.

5. Mr. Anandjiwala, ld. Counsel appearing for the appellant has taken this court through the explanation given by the accused while responding to the questions asked by the Court under section 313 of CrPC and the written statement of the accused which is at page 139 of the paper-book. He has also read the evidence of three important witnesses namely complainant PW.1 Pratapji Thakor (exh.37), PW.2 Babubhai Amthabhai Patni- Panch Witness No.1 (exh.45) and PW.4 Baburao Ramchandra Patil, PI, ACB i.e. Trapping Officer (exh.17). There is one more oral evidence of PW.3 Umedsingh Nathusing (Exh.16) who is the uncle of the complainant. Evidence of PW.5 PI Gobarbhai Khodabhai Desai of ACB (exh.73) is the evidence of formal nature because this witness has filed chargesheet in the case after obtaining sanction from the competent authority to prosecute the accused. Of course, Mr. Anandjiwala argued at length and has pointed out certain infirmities in the case of the prosecution and also absence of probabilities and basic improbabilities in the case of the prosecution. He has also drawn the attention of the Court to certain contradictions and omissions made by the key witnesses like the complainant and panch No.1 and so also Umedsingh PW.3. It is possible for the Court to capsule the arguments advanced by Mr. Anandjiwala putting them in following grannuals :-

(i) There is no link of convincing nature to prove the demand of bribe of Rs.1000/ as alleged on 02.12.1985 and some independent evidence was required to be led especially when there is no link evidence to prove that the accused had stayed over-night in panchayat office at village Magodi.

(ii) When it is the case of the prosecution that Rs.1000/ was demanded and even as per the story put forward by the prosecution, Rs.400/ were remained to be paid, then the accused would not accept Rs.100/ against remaining amount of Rs.400/. Placing reliance on the decision of the Apex Court in the case of **Hari Dev Sharma v/s State (Delhi Administration), AIR 1976 SC 1489,** it is argued that acceptance of only 10% of the actual bribe demand could not have been linked with the so-called demand of bribe. Accused would not have accepted such a petty amount of Rs.100/ against the original demand of Rs.1000/. So, the ld. Trial Judge ought to have discarded the evidence and the basic story of the prosecution.

(iii) There is no convincing evidence that the amount allegedly given to the accused by the complainant was the bribe amount because it is in

evidence that accused had arranged or suggested for a lawyer and had instructed the lawyer to make necessary arrangement by moving a bail plea before the Court. So, the Court was supposed to consider one of the probabilities whether the amount could be against the remuneration of a lawyer and/or towards the costs. So, mere recovery of the amount from the accused can not lead to an inference of acceptance of the bribe amount or illegal gratification. It may be a case of innocent acceptance of the amount on behalf of the lawyer arranged by the accused.

(iv) The basic story of the prosecution is that the accused No.2 was actively involved and practically he was a party in demanding the bribe and was interested to see that Rs.1000/ is paid to accused No.1. Of course, in plain words, the prosecution has not said this, but the implied allegation is that accused No.2 was the abettor and it is likely that he might get some share from the bribe amount. Even then, none of the prosecution witnesses have assigned any active role to accused No.1 being a person of their village. So, the witnesses who have attempted to side one of the accused so that he can be saved, why and how the version of such witnesses could

have been accepted as reliable piece of evidence for linking the accused with the crime, is also a question and the same has not been appropriately addressed by the trial Court. This is one of the basic infirmities which would go to the route of the case of the prosecution.

(v) The allegation as to the demand of the amount of bribe at Chiloda cross-roads by the accused is highly improbable. When the accused had stayed over-night at village Magodi and had insisted to bring the amount, why it was neither paid to the accused voluntarily by the complainant nor the amount was demanded by the accused till they reached Chiloda cross-roads, is also a question which makes the prosecution case doubtful as to repetition of the demand of bribe at Chiloda cross-roads and that too at the tea-stall and payment of Rs.600/ there which can be said to be an initial payment made by the complainant. This improbability in the story of the prosecution makes the prosecution case doubtful.

(vi) The evidence is very weak on the point qua the agreement of the accused to accept Rs.100/ only at Gandhinagar. It was not impossible for the accused to ask accused No.2 to recover the amount on his behalf or the accused would have insisted

that accused No.2 should also accompany all of them when they go to Gandhinagar for executing bail bonds in the Court. There were number of occasions for the accused to demand the amount because they had enough time even at Gandhinagar and even prior to their reaching actually to the Court at Gandhinagar with accused and brothers of complainant and formal arrest report prepared by the appellant-accused. So, the evidence of demand immediately prior to the acceptance of bribe amount ought not to have been accepted by the trial Court. When there was ample scope for the accused to demand remaining amount allegedly agreed by him, the accused would not have waited till last and, therefore, the case of the prosecution ought to have been thrown out by the trial Court on the ground of improbabilities.

6. While developing these arguments, he has taken me through the relevant part of evidence which is at page Nos. 204 to 207 of the paper-book. There is confusion about the place and about time when Rs.600/ were arranged by the complainant. Whether the amount was actually arranged and received by the complainant at village Magodi itself or arrangement could be made only at Chiloda cross-roads is again a confused situation on facts placed by the prosecution. Therefore, the Court ought not to have accepted the say of the prosecution

witnesses that Rs.600/ were actually paid to the accused at Chiloda cross-roads. According to Mr. Anandjiwala, the panchanama produced by the prosecution and proved by panch No.1, PW.2 Babubhai Patil, PI -Trapping Officer ought not to have been accepted as reliable piece of evidence. Panchanama has not been satisfactorily proved and as per the settled legal position, the prosecution is under obligation to prove that same was dictated by the panch and it was the objective and transparent recording of the facts stated therein. In the present case, panch himself has admitted that certain wrong references have been made in the panchanama. At one place, panch had even accepted that he was not a party in dictating the panchanama. Panch No.1 examined by the prosecution is a peon of RTO department. He had no capacity to dictate the panchanama. The panch had not much educational qualification and had studied up to 5th Standard. The selection of a panch is also not objective and it is in evidence that ACB officers have called number of persons from the office of RTO so as to act as a panch in ACB traps. RTO department is a defamed department. In such a fact situation, the ld. Special Judge ought to have observed that trapping officer has not cared to select a reputed person as a panch and it would adversely affect the case of the prosecution. The mode of recovery of currency notes from the accused is also not proved by consistent evidence. There is material

difference in narrating the sequence of story as to the recovery of the amount. As such, there is no discussion qua the evidence on the point of engagement of a lawyer in the deposition of the panch. It is clear from this that the panch witness has attempted to put curtain on some crucial aspects of the events that had occurred after raiding team reached Sector 30 at Gandhinagar.

7. Mr. Anandjiwala has drawn attention of the Court to to certain aspects including contradictions and they are:-

(i) The evidence of the complainant, in the present case, is that of an accomplice and his evidence has not been appreciated in that capacity. According to the complainant, between 11.00 p.m. And 12.00 mid-night of 01.12.1985, the accused came along with police patel i.e. Mukhi-accused No.2 for the purpose of arresting his three brothers and had demanded Rs.1000/ for the purpose of not putting the brothers of the complainant behind the bars and the complainant was asked to give the said amount on the next day morning in the panchayat office. The complainant has no-where stated in his evidence that in the night of 01.12.1985, his uncle Umedsingh was present when initial demand was made. This is

nothing but a conflict in the evidence of the complainant and Umedsingh.

(ii) There is clear inconsistency in the evidence of complainant Pratapji and his uncle Umedsingh regarding giving of that amount and acceptance of it because the amount was to be accepted at panchayat office only and that too in the morning. There was no reason for the accused to wait till after-noon and to take the complainant and others to Chiloda cross-roads especially when there is some distance between village Magodi and Chiloda cross-roads. The accused would not have accepted this amount of Rs.600/ in the presence of number of persons at tea-stall (lorry). Normally such acceptance would be in a secret place and not in a public place. This improbability has been ignored while appreciating the evidence of demand and acceptance of Rs.600/.

(iii) There is an error in appreciating the evidence regarding the demand made immediately prior to the acceptance of the bribe amount of Rs.100/. Witness Pratapji has stated in his evidence that the accused told him that “tomorrow you bring Rs.200/” whereas as per his own say the remaining amount would be Rs.400/, therefore, the

demand of Rs.200/ which the complainant was to pay on 03.12.1985 is not in consonance with the earlier version. According to this witness when this talk had taken place between them, his uncle, Raiji, Babaji and Punaji were present. He further says that all these persons had gone to Chiloda cross-roads in one truck. This witness is cross-examined in detail and in cross-examination he says that the appellant-accused told him to bring the remaining amount on the next day. Witness Umedsingh say that the appellant told Pratapji to give remaining amount, at that time, the complainant told him that he would pay the same tomorrow and thereafter they went home. He does not say as to how much was to be paid. He also does not say that it was agreed between them to pay Rs.100/. This witness is absolutely silent about the conversation which is alleged to have taken place between Pratapji and the appellant. The presence of this witness is admitted by Pratapji and, therefore, the evidence of Pratapji is not corroborated by the evidence of Umedsingh. Umedisingh in his cross-examination says that he never came to know as to how much amount was to be paid to the appellant.

(iv) That the evidence of panch does not inspire

any confidence. There are number of contradictions and the omissions in the evidence of panch. From the bare reading of panchnama, it becomes clear that he could not be present at the relevant time when there had talk between the complainant and the accused at the time of alleged acceptance of the amount and even at the stage of demonstration being made and preparation of the panchanama. It also becomes clear that he has simply signed the panchanama. Not only that but as per his own admission when his further statement was recorded, the panchanama was read over to him and some substance was noted down by the IO in his further statement. From this statement also, number of omissions have been brought from which it appears that the panch must not have seen anything and he has simply signed the panchanama.

(v) It is in evidence that when the complainant Pratapji and panch No.1 went to accused at Chiloda cross-roads on the day of trap after lodging the complaint where the accused was standing, the accused has not demanded the amount of bribe. At that time, the accused told the complainant that they were going to Sector No.30 at Gandhinagar in the Court for presenting the accused. Till the

Advocate Mr. Chetan Solanki was called and he was instructed to prepare papers for bail, no demand was made and when he was at a tea-stall (lorry) and they were standing, there was no conversation at all between the complainant and accused about the bribe amount. This fact situation has been ignored by the ld. Trial Judge while evaluating the evidence on the point of demand.

(vi) Witness Pratapji says in his evidence that the accused demanded the amount of Rs.100/. The amount which was in his left hand pocket of the bushirt was taken out by his right hand. The amount was demanded in presence of panch. He handed over the amount to the accused who accepted the same by his right hand and put the same in the right hand pocket of the shirt and thereafter the signal was given. On this aspect the evidence of panch is different. He says that all of them were present when this talk and acceptance took place. As soon as they reached at the tea-stall (lorry)of Bachubhai, he took out papers from the bag and thereafter the demand-acceptance was made. It is also pertinent to note that the demonstration was made in the jeep-car itself. By putting a curtain the demonstration was made inside the jeep-car. As per the evidence of Pratapji, he was standing

outside the jeep car at the time when demonstration was being made. The question is that as to how could he see anything which happened inside the jeep car. According to his say, on right hand finger tips the powder marks were seen. Panch No.1 was called and he took out the currency notes from the right pocket of the shirt of the accused. The number tallied with the preliminary panchanama and on examining it in the light of ultra-violate lamp, powder marks were seen. The witness also says that powder marks were seen inside the pocket in the light of the lamp. He also says that the hands of panch were seen in the lamp and powder marks were seen. In cross-examination this witness has admitted that when this demonstration was being made, he was standing outside the jeep. No experiment was done on the button of the bushirt of the accused. It was the upper portion of the flap which was not seen in the lamp light. He has also stated that on the tips of the fingers, powder marks were seen. A suggestion was put to the witness that the witness had tried to put the amount in the pocket by saying as the payment to be made to the advocate and at that time the accused told him to give the amount to the advocate directly, but the witness insisted for the same and he put the

amount in the hands of the accused and immediately the raiding party arrived at the scene. It was also suggested that powder marks were not found out from the pocket of the shirt of the accused.

(vii) One important fact has not been stated by Umedsingh i.e. about the presence of panch Babulal. According to him, accused had put the muddamal currency notes in his pocket. He has stated in his cross-examination that when they were performing the procedure for giving bail, he came to know that Pratapji has trapped the accused in corruption. This makes clear that Umedsingh has not seen the accused passing the currency notes. On this aspect, evidence of Babubhai is contradictory. He says in his examination-in-chief that on reaching the Court they all went to tea lorry of Bachubhai. The accused took out some papers from his hand bag and thereafter the accused demanded the amount by saying as to whether the amount is brought or not. So, there is no element of consistency in the evidence. It is in evidence that in all 8 persons were there including the complainant and they all sat at tea-stall (lorry) of Bachubhai. Whatever conversation that has taken place between the complainant and the accused, all were within the

hearing range. Any how, no convincing evidence has come on record. Evidence of tea-stallwala would have been the best piece of evidence and that has not been led.

(viii) There is inconsistency in the evidence about the place where the anthracene powder marks were seen or noticed while performing the procedure with the help of ultra-violate lamp and at the time of drawing second panchanama.

(ix) Absence of evidence of the persons who gave money to the complainant so in turn the same can be given to the accused, is also an important lacuna.

8. Mr. Anandjiwala has placed reliance on the decision in the case of **Naginlal Nandlal v/s The State of Gujarat, Vol.II-1961 GLR 664,** wherein this Court has observed about the use of anthracene powder in arranging the ACB trap and nature of evidence required to prove the anthracene powder marks. According to Mr. Anandjiwala, if observations made by this Court in the above-cited decision are kept in mind, evidence led by the prosecution in the present case, should not be accepted as convincing evidence because nobody has stated in his deposition that any of them were aware about the

characteristic and effect of use of anthracene powder in a scientific manner. On the contrary, witnesses were not clear about the type of marks that they had seen when ultra-violate lamp procedure was followed.

9. Mr. Anandjiwala has placed reliance on paras 19 & 20 of the decision in the case of **State of Gujarat v/s Gunvantlal H.Shah, 2006(1) GLR 418.** In the cited decision, the Court was dealing with an appeal against the order of acquittal passed by the ld. Special Judge, Mehsana. Para-19 of the cited decision is about the authorship of the panchanama and para-20 is the conclusion and the Court has observed that the panchanama is not a substantive piece of evidence which could have been relied on.

10. While resisting the arguments made by ld. Counsel Mr. Anandjiwala for the accused, Ms. Darshana Pandit, ld. APP for the State has drawn the attention of the Court that the actual quarrel between the brothers of the complainant had occurred much earlier and on plain reading of the evidence, it emerges clearly that as such there was no serious incident. On the contrary, it appears that the gravity was inserted by the accused and that too by going personally at village Magodi. So, the arrival of the accused to village Magodi by itself is found sudden and surprising and that fact is relevant and

the ld. Trial Judge has rightly considered the evidence of initial demand of Rs.1000/ made by the accused. The time of visit on 01.12.1985 indicates that the actual quarrel must have happened much earlier in the field, but the complaint came to be registered about that event on 01.12.1985. For the sake of arguments even if it is accepted that the visit of the accused at village Magodi in reference to the investigation in connection with the crime registered against the brothers of the complainant was at odd hours and that by itself should not be viewed as evidence incriminating against the accused, even then the conduct of the accused after reaching to village Magodi could not have been ignored. 11.00 p.m. Or 12.00 midnight are very odd hours so far as the villagers are concerned. The accused could have waited at Panchayat office till sunrise i.e till next day morning. However, he had visited police patel and took the police patel -Mukhi i.e. accused No.2 to the residence of the complainant. It has not come on record whether the complainant resides with any of his those three brothers. If the accused was serious about the arrest of the brothers of the complainant viz. accused named in the FIR, then he could have drawn at least panchanama about non-availability of all the three accused persons or any one of them. Absence of such document and explanation from the accused makes the conduct of the accused doubtful and in this background, the ld. Trial Judge has

accepted the version of the complainant that Rs.1000/ was demanded for not inflicting the formal arrest of three brothers of the complainant named in the FIR.

11. The distance between the police station where the accused was serving and village Magodi has not come on record in the exact way. It was not impossible for the accused to go back to his own residence directing the complainant to bring all the three accused in the morning to the police station. But instead of doing so, the accused stayed over-night at village Magodi. There is no inconsistency in the evidence of prosecution witnesses that the accused was very well there at village Magodi till the complainant arranged for Rs.600/ and that too by borrowing the same. The facts stated by the prosecution witness namely the complainant that Rs.600/ were paid to the accused at Chiloda cross-roads, makes his version more trustworthy. Nobody had prevented the complainant in saying that Rs.600/ were paid to the accused in the village itself so that his brothers may not be harassed. On the contrary, it has emerged indirectly that entire amount was arranged some time prior to its payment. It has not come on record that the complainant was already taking Rs.600/ in his pocket when they left for Chiloda cross-roads on the next day i.e. on 02.12.1985.

12. It is argued that ld. Trial Judge has acquitted the accused No.2 and it appears that as the accused No.2 was

not present when the bribe amount of Rs.100/ was accepted and no specific role of either demand or acceptance of the amount was assigned to him by the prosecution witnesses, he was acquitted. So, the acquittal of accused No.2 would not help in any manner to the present appellant -accused. The source from where Rs.600/ were collected by the complainant is also disclosed. So, there is an element of transparency. It has come on record that one key witness namely Shanaji who could have thrown light on this aspect has expired. This has come on record through the evidence of the complainant (page No.191 of the paper-book). It is in evidence that this very Shanaji was there and was present at the time when the amount of Rs.100/ was paid to the accused on the day of the trap i.e. on 03.12.1985. The FIR registered against the brothers of the accused was for the offences punishable under sections 323, 447, 504, 506(2) and 114 of Indian Penal code and it was an old complaint. It would be wrong to say that the alleged quarrel had taken place on 01.12.1985 and thereafter immediately the complaint was registered and in couple of hours the accused had started for village Magodi to see that the accused named in the said FIR are arrested.

13. As payment of Rs.600/ was already made and Rs.400/ has remained to be paid, that amount was normally could have been taken by the complainant or the accused could

have insisted for the said amount, but the prosecution is not supposed to explain as to in what circumstances it was agreed to pay Rs.100/ to the accused. It is very likely that accused No.2 might have decided to recover his share directly from the complainant or his family. The Court is not supposed to draw any inference on conjectures. The case of the prosecution is that Rs.1000/ were demanded, Rs.600/ were paid and out of the remaining amount, the accused had agreed to accept Rs.100/ and that amount has been accepted as amount of bribe in presence of panch No.1 and other prosecution witnesses. It is true that all such witnesses may not have been examined. Evidence of Shanaji could have been the best evidence. How, the death of an important witness could result into prejudice to the prosecution and, therefore, the ld. Trial Judge has appreciated the evidence of the complainant and panch No.1 in appropriate manner.

14. It is further argued that though the panch has accepted that some part of panchanama has not been dictated by him or the same is not as per his say and whatever he has said before the Court is correct, but if this portion of panchanama and version of panch No.1 is considered, they can be equated as minor infirmities. It is not necessary that the panch should dictate each word of panchanama. Panch may be an illiterate person, but panch has remained conscious about the details that are

being written. But there is no material discrepancy in the evidence of the complainant and panch qua the demand of bribe amount made immediately prior to its acceptance and the ld. Trial Judge could not have ignored this. Acceptance of Rs.100/ if is found convincing, then there was no reason for the ld. Trial judge to ignore the evidence of the demand initially made and the fact of payment of Rs.600/ on previous day. The presence of anthracene powder was found at various places by the Trapping Officer Mr. Patil. The evidence of Mr. Patil could have been accepted by the Court. Here in the present case, the complainant and panch No.1 gets corroboration about the presence of anthracene powder marks on the hands of the accused and on the inner side of the pocket of the bushirt of the accused from where muddamal currency notes were recovered. Ld. APP Ms. Pandit has taken me through relevant part of the evidence of the complainant and the evidence of panch No.1. She has also read over the relevant parts and evidence of IO on this point which is at page Nos.315-325 of the paper-book.

15. The probability of the acceptance of the amount against the advocate fees, is not found to be a plausible explanation by the ld. Trial Judge. It is true that the accused is supposed to bring the probability on record, but whether the accused was supposed to accept any cash

amount as public servant and that too on behalf of the advocate Mr. Solanki, is the question. The accused could have examined Mr. Chetan Solanki to prove that he had instructed the accused to accept the amount of fees of Rs.100/ and the complainant was also directed accordingly to hand over the amount of Rs.100/ to the accused. No suggestion was made to the complainant nor to the other persons present when Mr. Chetan Solanki was called by the accused. On the contrary, certain admissions made by the accused in his further written statement need consideration. According to ld.APP Ms. Pandit, ld. Trial Judge has accepted the evidence as reliable about the passing of the muddamal currency notes from the complainant to the accused. This is not a case of mere recovery of muddamal currency notes from the accused. If the accused was really helpful to the complainant and his brothers and when they were not formally arrested and all of them had traveled conveniently up to the doorsteps of the Court situated in sector No.30 at Gandhinagar, then why the complainant would implicate the accused in such a serious offence because as such there was no animosity or ill-feeling between the complainant and the accused. The complainant would not have dared to implicate his own Mukhi (police-patel) at the time of dictating the FIR. For the sake of arguments even if it is presumed that the complainant may have some inimical feelings with the local person i.e. Mukhi

and to implicate him a serious offence to settle the score of any other events that might have occurred in the past, he might have implicated accused No.2 simultaneously and after settling amongst the villagers he might not have remained serious about his grievance against accused No.2, but in that situation, the complainant would not have implicated the accused in such a serious offence especially when he had helped the complainant and his brothers by not inflicting a formal arrest otherwise it was legally possible for the accused to keep all the three brothers in the custody for some hours. So, it was not possible for the trial Court to believe the theory of false implication.

16. It is argued that panch was a government servant. Of course, he has studied up to 5th Standard, but he was not totally illiterate person. His evidence could not have been discarded merely because the department in which he is working is having a defamed image.

17. Some conflict in the evidence of panch and complainant makes the deposition more natural and reliable. On the contrary, in number of cases, the Courts have viewed version of the witnesses with some doubt when they were found in a parrot like similarity. The Court was supposed to consider the material version and as per the settled legal position, the Court should concentrate

on substantiality of facts stated and not on the exact words. It is true that exact words are also important if the exchange of words qua the demand made immediately prior to the acceptance are very few; say; one or two words, but on the date of deposition, if the witness uses a word having similar meaning, then the same can not be equated with a contradiction or conflict in narration of incident. So, in the present case, the Court should observe that panch witness has stated the facts that were true according to him and has not mechanically agreed to the facts stated in the panchanama. The crucial question would be that why and how such type of words and sentence have entered in the panchanama, but in my view, the officer who has actually drawn and written the panchanama, would be competent to do so. No pointed question was asked to Mr. Patil by referring and reading relevant part of evidence of the panch. Ld. Trial Judge has discussed the evidence as to presence of anthracene powder marks and it is in evidence that anthracene powder marks were seen on the right hand fingers and on the bushirt as well as inner side of the pocket of the bushirt. The pocket has a flap over it and from the areas from where anthracene powder marks were noticed, it would be difficult for the Court to accept that it may be a case of forcible insertion or planting of the amount. Placing reliance on th decision in the case of State of UP v/s Dr.GK Gosh, AIR 1984 SC 1453, it is submitted that

the complainant or panch can get corroboration from circumstances also. Here in the present case, circumstances clearly favour the prosecution and such circumstances are more than one. The say of the accused is also considered in detail (para-57 of the judgment page No.394 of the paper-book). It is argued that the anxiety to help the accused of the FIR registered and to facilitate all the three is also a circumstance. The conduct of the accused as police officer is unnatural especially when he had reached to village Magodi at mid-night hours with a view to inflict arrest on the accused persons and it could not have helped the accused in the manner in which it has emerged in the present case. If the reasons assigned by the ld. Trial Judge are correct, logical and legal, this Court should not disturb the finding. It is true that this Court can rewrite the judgment and re-appreciate the entire evidence led, but unless such requirement is pointed out or inferable, only then the appellate Court while dealing with the appeal against the order of conviction, should go into it. Ld. APP Ms. Pandit has placed reliance on one decision in the case of **J.K.Sharma v/s State of Gujarat, 2007(1) GLR 99 (Paras 31 to 33).**

For short, according to Ms. Pandit, the judgment and order of conviction and sentence is absolutely legal. There are no major infirmities nor the ld. Trial Judge

has committed any grave error in appreciating the evidence and, therefore, the Court should dismiss the appeal.

18. To consider the rival contentions, it is not necessary to reproduce all facts narrated by the key prosecution witnesses and it is sufficient to discuss the reasons assigned by the ld. Trial Judge in reference to the legality and validity of the conclusions recorded based on oral as well as documentary evidence relied on by the ld. Trial Judge and part of the evidence either not considered or ignored while drawing conclusions. In the present case, the basic story of the prosecution is that on 01.12.1985, the amount of Rs.1000/ was demanded by the accused at odd hours between 11.00 p.m. And 12.00 midnight or round about that time showing apprehension of the arrest of the three brothers of the complainant. The accused had been to village Magodi and at the residence of the complainant saying that his brothers are required to be produced and then arrested in connection with an incident occurred in November,1985 in respect of which the complaint came to be filed on 01.12.1985. The complaint under which the brothers of the complainant were required to be arrested and produced before the Court was registered with Dabhoda Police Station and relevant documents of the crime during the search by the raiding party officer were seen, perused and returned to

Police Constable Mr. Natvarbhai Zala i.e. the present appellant accused. That the crime was registered as CR No.201/1985 along with diary and it is referred in the panchanama that the zerox copies of the original documents were seized. Originals were returned. There is no serious dispute even by the defence side about the registration of the offence being CR No.201/1985 and the relevant page of diary wherein the accused had noted the duties performed by him. The arrest of the accused was shown at 14.00 hours of 3.12.1985 and there is also reference in the diary about the night-halt made by the accused Natvarbhai at village Magodi on 01.12.1985. The procedure to recover the documents that were in the bag of the accused had been proved by the panch witness satisfactorily in the deposition exh.44 and there is no serious challenge. There is no clear denial even by the accused that he had stayed over-night at village Magodi on 01.12.1985. Of course, he has denied relevant part of evidence when brought to his notice at the time of his statement recorded under section 313 of CrPC wherein the accused has admitted that he had gone to village Magodi on 01.12.1985 and the visit was in connection with the complaint received from one Laxman Patel in the month of November,1985. He has also admitted that as it was too late, he could not drew the panchanama of the scene of offence and, therefore, the panchanama was drawn on 02.12.1985 in the morning. According to the accused, he

had attempted to trace the accused persons named in the complaint i.e. Badarji Javanji, Babuji Javanji and Parbatji Javanji, but they were not available and he had instructed Mukhi i.e. original accused No.2 to see that accused persons appear before Dabhoda police station and thereafter he left village Magodi for Dabhoda via Chiloda cross-roads. When the ld. Trial Judge was supposed to appreciate the oral version of the complainant about the conduct of the accused and initial demand of Rs.1000/, the statement of the accused recorded under section 313 of CrPC if is found useful, then the same can be considered to decide the veracity of the complainant and the strength of his evidence. Statement under section 313 of CrPC recorded by the trial Court requires to be read as a whole and it is settled that entire statement or any part thereof can be considered by the Court. There is no exact date of complaint for which the accused had gone to village Magodi, but it was a month of November, 1985 and it appears that it was treated as complaint and investigation was started by the accused on 01.12.1985. Till that date, nothing had happened. The application given in the month of November,1985, may be of 13.11.1985 or any later date in the month of November, 1985, but it is inferable that drawing of the panchanama of the scene of occurrence would be a sheer formality as no serious offence qua body of the person or property was allegedly committed. But the conduct of the accused

to reach village Magodi at odd hours itself is found un-natural. If the accused was sincere about his duties, then after reaching to village Magodi, he could have stayed in panchayat office and called the accused persons and the complainant in the next day morning. There was no reason for the trial Court to disbelieve that the accused had reached to the house of the complainant during mid-night hours and the complainant was asked to produce his three brothers. There is nothing in evidence to show that prior to calling the complainant, the accused had attempted to visit the possible place where any of the three accused could have been traced. It is not even claimed by the accused in his written explanatory statement as to what efforts were made by him immediately after reaching village Magodi to inflict the arrest of the accused persons or any one of them. What was the scope for the accused to disturb a citizen at his residence who is not named even as an accused in the FIR. Whether it was obligatory on the part of the complainant to get his brothers produced immediately and as and when asked by the police, is also a question. There is no clear evidence as to the distance between Dabhoda Police Station and village Magodi. So, after drawing panchanama during early hours of 02.12.1985,the accused could have returned either to his residence or to Dabhoda Police Station or at his duty place. The ld. Trial Judge has appreciated the situation created qua

the complainant. When it is the say of the complainant that Rs.1000/ were demanded and the accused was insisting for the payment and told the complainant in turn to oblige the complainant by not inflicting the formal arrest of any of his three brothers, formal arrest of the accused could be shown at any time immediately prior to their production before the ld. JMFC, Gandhinagar who had territorial jurisdiction over the area where the offence is allegedly committed in the month of November, 1985. It is referred that the arrest report of all the three accused indicate the time of arrest and the date shown is 03.12.1985 meaning thereby that the date of trap. More than one witness including the complainant and panch No.1 has stated that all the three accused were there in sector No.30 at Gandhinagar on 03.12.1985 when the accused was trapped while accepting the illegal gratification of Rs.100/ from the complainant. None of the witnesses have been even suggested that all the three accused were arrested much prior before they were taken before the ld. Magistrate. Even according to the accused, on 03.12.1985, he had left for Gandhinagar with one police constable Mr. Dilawar and both of them had reached Chiloda cross-roads and he had inquired whether they had brought sureties. After reaching sector 30 at Gandhinagar and mainly the Court, the accused and Police Constable Mr. Dilawar had taken all the three brothers of the complainant in the Court,

but as there was recess time, relevant papers i.e. arrest report etc. were given to the Nazir of the Court. Complainant Pratapji and other relatives had requested the accused to make necessary arrangement for an advocate. So, the preparation of arrest report and its production before Nazir during the recess hours on 03.12.1985, is the conduct of the accused that he himself has narrated in his statement under section 313 of CrPC. The version of the complainant and panch No.1 was required to be appreciated by the ld. Trial Judge especially when the complainant has claimed that Rs.1000/ was demanded by the accused on 01.12.1985 and had insisted for the payment at the earliest and the complainant was given time to pay the amount on the next day morning telling him that the accused is staying over-night and so the complainant should make necessary arrangement and pay the said amount and there was no good reason for the ld. Trial Judge for discarding this part of evidence of the complainant. The events that had occurred on 01.12.1985 during the late night-hours have been narrated by the complainant and he gets some corroboration from one another witness namely one of the relatives PW 3 Umedsingh. Of course, PW Umedsingh has clearly accepted that he has not gone on Sunday night when the accused had come for the first time, but he has said categorically in the cross-examination that the accused had come on Sunday night and he was called by

the nephew in the morning i.e. Monday. The discussion has taken place at Panchayat Office in the morning on Monday as narrated by PW 3 Umedsingh, corroborates one situation that during night hours, the discussion about the payment must have taken place. This witness PW Umedsingh has stated that the accused asked the complainant that if he pays, then he (accused) may help in the case. The complainant when gets corroboration not only from the complaint exh.38, but so also from the conduct of the accused and the statement given by the accused under section 313 of CrPC qua the initial demand, the ld. Trial Judge could have safely relied on the same. It is true that the complainant is a trap witness and a person interested in the result of the case as well as the trap. In the present case, he had parted with the amount of Rs.600/. So, it is also possible to argue that his status is of an accomplice. But in a given set of facts, it is not possible for the Court to even accept the arguments that the present complainant was an accomplice because he was not ready to part with the amount. Of course, he was interested in seeing that his brothers are not either arrested or harassed by the accused, otherwise he could have parted with the same amount before the accused left village Magodi. The decision of not making any payment to the accused on Monday when he was at village Magodi, may be for more than one reasons; he may not have that amount in his pocket or he may have interest in

ascertaining whether the accused is sticking to his words of not inflicting any formal arrest and helps them in the case. For the sake of arguments if the Court accepts that he can be said to be an accomplice, even then on this ground also, the ld. Trial Judge could not have discarded the evidence. The settled legal evidence is that the evidence of an accomplice -complainant should be scanned closely and the Court should try to seek the corroboration from other evidence and the corroborative piece of evidence also should inspire the confidence.

19. The say of the complainant is that some incident had occurred on 01.12.1985 and his brother Parbatji was beaten by kick and fist blows, but the accused had been to village Magodi in connection with one complaint given in the month of November,1985 as stated by him in the written explanation under section 313 of CrPC. Be that as may be, but the fact remains that it is proved by the cogent evidence by the prosecution that with the help of evidence of the complainant that on 01.12.1985, the accused had gone to village Magodi and had asked and inquired about his three brothers. At that time, demand of Rs.1000/ was made saying that as his brothers are not there, he should pay Rs.1000/ and if the amount is paid, they may not be taken to jail and the accused had also asked that he should bring the amount on the next day morning at Panchayat Office and should also bring his

brothers. At that time, Mukhi Baldevbhai i.e. original accused No.2 was also there and both of them left the residence of the complainant. On 02.12.1985, the accused had approached Harijan Shanaji Manaji and the complainant had tried to borrow the amount from him. There is no force in the arguments that non-examination of Harijan Shanaji Manaji as witness would go to the root of the case of the prosecution. It has come in evidence that Harijan Shanaji Manaji were cited as witness and was also present physically when the amount of Rs.600/ was paid to the accused. At what point of time, the complainant got the amount of Rs.600/ from Harijan Shanaji Manaji has not come on record in a satisfactory manner. It is true that the amount of Rs.600/ could have been paid and accused No.1 would have insisted for the payment when he was at village Magodi, but ultimately, they were asked to come to Chiloda cross-roads. According to the complainant, Rs.600/ then was paid at Chiloda cross-roads and that too in a hotel (tea-stall) where they were sitting. The accused had asked that though he had demanded Rs.1000/, why he has brought Rs.600/ only? Ultimately, at the request of the complainant, he had agreed to accept Rs.200/ on the next day i.e. on 03.12.1985. Again the complainant persuaded and told him that tomorrow he would bring Rs.100/ if possible. Thereafter he and his brothers had returned to their home. Along with the complainant, his uncle i.e. PW 3 Umedsingh, Khumansingh Raijiji and

Punjaji were there and Harijan Shanaji Manaji was also there. The complainant has consistently said that he had never agreed to pay the bribe amount and was not even happy to get his work done by paying the amount of bribe, but the accused was insisting for payment under the threat of arrest of his brothers and so he has paid the amount, is the some and substance of the version of the complainant.

20. PW 3 Umedsingh has corroborated the version of the complainant about the payment of Rs.600/ made by the complainant to the accused. This amount was paid against the demand made by the accused. It is in evidence of the complainant as well as PW 3 Umedsingh that they were asked to reach to Chiloda cross-roads and when they were sitting, the accused had come and had demanded money from Pratapji. The say of the complainant Pratapji is that Jamadar was with them when they left for Chiloda. So, this infirmity whether is sufficient to nullify the evidence as to transaction of Rs.600/ that has taken place at Chiloda cross-roads, was the question before the ld. Trial Judge and it was argued also as appears from the notes of arguments. According to ld. Counsel Mr. Anandjiwala, the payment of Rs.600/ at Chiloda cross-roads if is not found acceptable on the ground of infirmity emerging from the conflict of evidence as to whether PW Umedisingh had accompanied complainant and the

accused up to Chiloda cross-roads and also on the point of improbability, then the prosecution version should not be accepted as to initial demand of Rs.1000/ made by the accused. But in my view, the conflict between the version of the complainant and PW Umedsingh as to how they had reached Chiloda cross-roads makes their version more natural. These two witnesses are relatives and if both of them were deposing before the Court in concurrence or consultation with each other, then such conflict would not have come on record. Why a Jamadar should accept the amount in a hotel and that too in presence of number of persons, is also an argument while developing the point of improbability in the case of prosecution. But, in my view, the version of PW Umedsingh is found natural. He has narrated in brief the conversation that has taken place between the accused and the complainant when Rs.600/ were paid. It is true that normally the government servant would not accept the bribe in a place like hotel, but ultimately, everything depends on the psychology of the accused. Feeling unsafe, he may not have insisted for payment at village Magodi itself. The person who, according to the complainant, had given the amount of Rs.600/ to the complainant, was also present at Chiloda cross-road. The arrangements may have been made for the said amount. If the amount was actually paid by Harijan Shanaji Manaji and received by the complainant so that the same can be

paid to the accused, then there was no reason for Shanaji Manaji to go to Chiloda cross-roads. But it emerges from the evidence that the amount was arranged and was given to the complainant when he was at Chiloda cross-roads. The fact that all the three accused i.e. brothers of the complainant were there at Chiloda cross-roads, is suggestive of one significant aspect. As the amount was not paid till everybody reached Chiloda cross-roads and had made a halt at tea-stall referred to as Hotel by the prosecution witnesses, the accused had not permitted the accused persons (brothers of the complainant) to go. Failure of payment of Rs.600/ may have resulted into formal arrest of the brothers of the complainant there and there. It is also possible that Harijan Shanaji Manaji- a person who was to give money as borrowings, might have thought to ascertain the truth about the reason for which the amount was to be borrowed from him. As such, it has come on record in a satisfactory manner that from Chiloda cross-roads, the accused had left for Dabhoda after giving certain instructions to the complainant and the accused persons (brothers of the complainant) permitting them to go to their village with complainant. So, it is possible for the Court to accept the arguments of Mr. Anandjiwala that theory of payment of Rs.600/ at Chiloda cross-roads is a fabricated and false theory and nothing had happened at Chiloda cross-roads on 02.12.1985. The possibility of

insistence for the payment of the amount could have been made at village Magodi itself would not make the prosecution story doubtful. It is the experience of the society as well as of the Court that some corrupt government servants are accepting bribes openly and without any fear. Especially when the accused was in constant touch with the complainant and his brothers since morning of 02.12.1985, there was no reason to have any doubt in his mind that he might be trapped because all concerned and other relatives including the uncle of the complainant were there before the accused. It is the case of the prosecution that the accused No.2 was also present when the amount was settled. When Mukhi of the village was present when Rs.1000/ was demanded and the complainant was asked to bring that amount in the morning, the version of the prosecution witnesses can be accepted that the accused accepted the amount of Rs.600/ boldly. It is not in evidence that the accused was at that point of time, in police uniform otherwise he may not think to accept any cash amount. The bribe amount normally in cash is being paid and accepted in a surreptitious manner. Even a police person in uniform can reiterate the demand and accept the amount. There is sufficient corroboration in the say of the complainant that when Rs.600/ were paid to the accused, he was not satisfied and had insisted for some more amount and had demanded Rs.200/. PW Umedsingh has not stated the figure

of Rs.200/ in his examination-in-chief, but he did say that the accused was insisting for more amount. So, the story put forward by the prosecution of initial amount of bribe amount is found reliable and arguments advanced by ld. Counsel Mr. Anandjiwala for the accused are not found convincing.

21. Undisputedly, the accused was trapped while accepting Rs.100/ from the complainant. Immediately on acceptance of muddamal currency notes, he was caught red handed. When there is no material infirmity qua the first part of panchanama and panch No.1 has proved the first part of panchanama in a satisfactory manner and has also stated that the complaint was read over to him when first part of panchanama was drawn, the Court can make use of the strength of the evidence led in the nature of first part of panchanama and proved as to the complaint and his contents at the time of appreciating the evidence qua the second part of the panchanama drawn by the trapping officer.

22. The argument of Mr. Anandjiwala based on the decision of the Supreme Court in the case of ***Hari Dev Sharma (supra)***, is that if Rs.1000/ was the actual demand and as per the say of the prosecution, Rs.600/ were paid on 02.12.1985, then Rs.400/ were remained to be paid and in such a fact situation, the accused would not

accept Rs.100/ only against the remaining amount of Rs.400/, has no strength. The facts of the cited decision in the case of ***Hari Dev Sharma (Supra)*** are materially different. The Apex Court while dealing with the cited case, has appreciated the nature of evidence led by the prosecution and on appreciation, the Apex Court found that the case of prosecution was one integrated story which the trial Court has accepted and convicted the appellant. The High Court has disbelieved the vital part of the prosecution story, but confirmed the order of conviction. The Apex Court found that although there were circumstances which were highly suspicious against the accused, but High Court when disbelieved the essential part of the prosecution case, the conviction ought not to have been upheld by the High Court. In this cited decision, the complainant had agreed to pay Rs.100/ as a bribe. The appellant made over a draft application instructing the complainant to file a typed copy of the same in his office. The appellant took Rs.20/ from the complainant and it was agreed that the balance of Rs.80/ was to be paid after permission was granted. The complainant had the draft given to him by the appellant photographed before returning the manuscript to the appellant on January 31, 1969. Thereafter between 21.01.1969 and February 1969, on several occasions, the complainant met the accused and the complainant was assured that his matter will be finalized very soon. In

this background of facts, the High Court found that after receiving Rs.20/ on January 28, 1969 the accused would not have accepted Rs.70/ on February 26,1969 for the reason that the complainant was not able to collect money – full amount of Rs.80/. The High Court has considered the explanation given by the accused. The Apex Court has not disbelieved the case of the prosecution on the sole ground that some amount less than the amount demanded was accepted by the accused. In the present case, Rs.600/ were paid to the accused, is the case of the prosecution. Ultimately, it has come on record that Rs.200/ were insisted by the accused and not Rs.400/ as argued by ld. Counsel Mr. Anandjiwala. It is probable that the amount of Rs.200/- was directed to be paid or otherwise receivable in presence of Mukhi of the village i.e. original accused No.2. He has been acquitted as there is no role attributed to him on the day of trap and none of the prosecution witnesses has stated that the accused No.2 received any amount or was to receive from the remaining amount of Rs.400/. So, Rs.100/ tendered as bribe money to the accused was 50% amount of the amount that he had insisted. It is in evidence of the complainant that the accused had insisted for the payment of Rs.200/ and in response thereto, he had said that he would try to bring Rs.100/ . So it is not 10% amount, but is 50% amount that was insisted by the accused.

23. The complainant has narrated the details to the Trapping Office at the time of giving complaint and, therefore, the muddamal currency notes of Rs.50/ were applied with anthracene powder. It is not a matter of dispute that the notice referred to in the first part of panchanama by mentioning the number of currency notes had been recovered from the accused. The accused himself has not even seriously disputed about the recovery of the said amount from him. He has attempted to explain the fact situation proved by the complainant, panch No.1 and Trapping Officer qua the recovery of the muddamal currency notes from the accused and presence of anthracene powder marks that were found on the hands of the accused, on the flap of the pocket as also on the inner side of the pocket. If we look to the evidence in this regard, it has emerged that :-

(i) The conflict of evidence as meeting of the complainant and the accused prior to their arrival at Sector 30 at Gandhinagar is very minor and in the same way there is no material conflict in the deposition of the complainant and Trapping Officer Mr. Patil as to under what circumstances and how an amount of Rs.100/ is to be paid to the accused against the original demand of Rs.1000/. There is no serious challenge on one fact stated by the

complainant that he was asked to bring his all the three brothers in the Court at Gandhinagar so that bail bonds can be executed in the Court on their production. Mr. Patil, of course, has not stated that the complainant had informed him about the reasons for going to Sector 30 at Gandhinagar, but as such, this can not be said to be a conflicting evidence. Each sentence uttered by the complainant in his deposition may not have corroboration. The material aspect told by the important witnesses, if needs corroboration by any other oral evidence, then only the Court should insist on such testimony from other witnesses competent to corroborate. Here the documents seized by the Investigating Officer and the explanation of the accused as to his presence at Sector No.30 at Gandhinagar near the Court sufficiently corroborates the say of the complainant as to why they had been at Sector No.30 at Gandhinagar and the accused was also present there. Written explanation given by the accused under section 313 of CrPC is running in several paras. Having considered the contents of paras 8, 10 & 11 of this explanation, the accused himself has impliedly admitted that he was present at relevant point of time and that too in connection with the arrest, production and bail

procedure of the accused persons (brothers of the complainant). He has denied other aspects as to conversation qua the demand of the accused made by him in presence of panch PW Babubhai Patni and recovery of the same from the pocket of the accused. The Basic substance of the allegation is the denial and the reasons for his denial. He has also attempted to point out some conflict or inadequacy of evidence found in the deposition of PW Babubhai Patni and the complainant whereby these two witnesses had narrated the details of recovery of the currency notes from the accused. Even if the Court ignores unsatisfactory explanation of the accused because burden is ultimately on the prosecution to prove the case, the finding of the ld. Trial Judge is found reasoned one and sounds good logic based on settled legal position. When the complainant and panch No.1 Babubhai Patni have no substantive inconsistency about the place where the amount of Rs.100/ was demanded and passing of muddamal currency notes from the complainant to the accused, then there was no reason for the trial Court to ignore that part of evidence. Both these witnesses again have stated without any material inconsistency that the signal was given by the complainant after acceptance of muddamal currency

notes by the accused and the accused was apprehended by the officials of the raiding party. It is very likely that while accepting the amount and putting the same into pocket, some part of bushirt of the accused may not have come into the contact of the muddamal currency notes. Each physical gesture of the accused while putting the muddamal currency notes into pocket is not required to be stated either by the Panch or by the complainant. It is sufficient if it is proved beyond doubt that immediately after some conversation or gesture, muddamal currency notes were tendered to the accused, same were accepted by the accused either by his right or left hand and he had pocketed that amount. There is no conflict on this point. There is even no conflict in evidence qua pocket. Whether it was pocket of the pent or shirt or whether it was right side pocket or left side pocket of the shirt, the accused was not supposed to touch the currency notes. Ld. APP Ms. Pandit has rightly submitted that it was not his duty to manage for an advocate for the accused. Ultimately, the accused was a member of investigating-cum-prosecuting agency. It was the first stage of investigation i.e. arrest of the accused and when advocate Mr. Chetan Solanki has not stepped into witness box to prove

that he had instructed the complainant to hand over the amount of fees to the accused, then this Court should not accept the probability of acceptance of the amount against the amount of fees payable to the accused.

(ii) The evidence as to the payment of vehicle charges for reaching to the Court at Gandhinagar satisfactorily establishes one fact that it was not a government vehicle and the amount was not paid either by the accused or by any other police personnel. The list of the documents that were seized or found does not contain a formal arrest panchanama which normally contains the description of the body of the person arrested and forwarded to the Court. When panch No.1 has not stated anything about the procedure followed by the accused inflicting formal arrest of the brothers of the complainant as he was in the company of the complainant since he was called to act as a panch on 03.12.1985, then the time shown for arrest of the brothers of the complainant i.e. 14.00 hours smells something fishy. This circumstance amply corroborates the ultimate version of the prosecution that the accused had promised the complainant to help him in obtaining bail orders from the Court without inflicting the

actual arrest or other interrogation about the incident and for doing that work, Rs.100/ were tendered to satisfy the ultimate demand of Rs.1000/. Whether the accused could have accepted only Rs.100/ against Rs.400/ or not or such acceptance whether improbablize the entire case of the prosecution, were the questions before the trial Court and they have been satisfactorily addressed by the Court and the ld. Trial Judge has recorded a conclusion that this is not a case of mere recovery of the amount. It is apparent from the facts that the amount recovered from the accused was not the amount other than illegal gratification and that too in performing his official duties as police officer. The persons produced before the Court for bail and their relations with the complainant is also a circumstance. There is nothing on record to show that the complainant had vendetta against the accused or the original accused No.2. It has not come on record that because of personal grievance or inimical feelings between original accused No.2 and the complainant, he had concocted a false case and original accused No.2 being a local person and Mukhi i.e. Police Patel, none of the witnesses have stated anything incriminating against accused No.2. It is not possible to accept as one of the

probabilities that such a fact situation might have resulted into false implication of accused No.1. Accused No.1 ought to have refused to accept the amount tendered if it was not the amount against his demand. It has also not emerged from the evidence that the accused had refused to accept the amount saying that he would not accept anything less than Rs.200/. When it is satisfactorily established by the complainant, Panch No.1 and Trapping Officer Mr. Patil that muddamal currency notes mentioned in the first part of panchanama were recovered from the accused, the explanation of bare denial could not have been accepted by the trial Court.

(iii) When it is found that there is ample evidence of cogent nature that Rs.100/ was demanded by the accused on the spot mentioned in the second part of panchanama near the Court of ld. JMFC, Gandhinagar and muddamal currency notes were tendered to the accused and they were accepted and pocketed by the accused, is sufficient evidence that can be considered to raise presumption under section 4 of the Old Act. Muddamal Article Nos. 3 & 6 described in muddamal pavti (receipt) also corroborates the version of the prosecution that the accused had decided to

oblige the complainant and his brothers. Formal arrest panchanama was to be prepared by him subsequently and, therefore only, one piece of paper was found containing the names of the accused produced before the Court with some minor details. So, the amount of Rs.100/ in form of two currency notes of Rs.50/ denomination, was not an innocent acceptance of the amount or acceptance of the amount or was the acceptance of the amount other than the bribe amount. So, in the present case, the accused was under obligation to rebut the presumption raised against him by giving some explanation or evidence or both which can be said to be plausible or probable explanation. No such explanation is coming forth. Though written explanation given by the accused runs in number of paragraphs, the arguments referred to herein above placed before the Court advanced by ld. APP Ms. Pandit sounds good logic.

24. So far as the infirmities pointed out by Mr. Anandjiwala while making his submissions are concerned, he has drawn attention of the Court to certain aspects and these aspects have been referred mainly in para-7 of the judgment and has stated that on the day of the trap, the complainant, panch No.1 and accused had met at Chiloda cross-roads as they were to proceed to Sector

No.30 at Gandhinagar. It was possible for the accused to demand Rs.100/ at Chiloda cross-roads. It was neither demanded nor offered by the complainant, but this can not be said to be infirmity because normally the people would part with the bribe amount on satisfaction that the work agreed to be done, actually is being carried out as per their wish or desire. This can not be said to be infirmity in the nature of inconsistency in the story of the prosecution. The alleged difference pointed out in the deposition of the complainant and panch No.1 as to when amount of bribe of Rs.100/ was actually demanded and in turn handed over to the complainant accused, is not a difference because to get an adverse impact on the case of the prosecution, in a given case, the defence should successfully point out the difference which can be said to be either a contradiction or apparent conflict in the version having diluting or nullifying effect of the incriminating facts stated by the witnesses examined to prove one relevant aspect. The difference pointed out by Mr. Anandjiwala referred to in para-7(iv) & (vi) are not the difference of such nature. On the contrary, this makes the version of these two witnesses more natural.

25. It is not possible for the Court to ignore one important aspect i.e. of hidden demand- the fact satisfactorily proved by the prosecution regarding the bribe money on the date of trap and its genuine recovery

from the accused which proves an element of agreement/understanding between the complainant and accused. The say of the prosecution is that the amount was demanded to show some leniency or favour towards brother of the complainant. What type of favour or leniency has been shown by the accused has come on record automatically from the documentary as well as oral evidence led by the complainant, his uncle PW Umedsingh and panch No.1. In the background of this aspect, why the say of the complainant should not be accepted about the facts stated by him whereby he has proved the initial demand of Rs.1000/ and payment of Rs.600/, was the question before the trial Court and this aspect has been dealt with by assigning logical reasons. In my view, the version of the complainant about the payment of Rs.600/ against the initial demand of Rs.1000/ has come on record in a genuine way. It is true that the case of the prosecution is that the accused had demanded the amount on the next day morning and he had indicated the place of his stay i.e. panchayat office. But this simply shows insistence of the accused to have bribe amount at the earliest in the morning. According to the complainant, it was not possible for him to arrange for the amount and, therefore, he had gone to Harijan Shanaji Manaji. So, in the early morning of 02.12.1985, the complainant may not have the amount which could substantially satisfy the demand of the accused. There was no scope for the accused

to insist for the amount at village itself and it was also possible for him to extend his stay under the guise of investigation till he receives the amount. So, under what circumstance the accused has decided to accept the amount later on at any time during the day of 02.12.1985, can be explained by the accused only. Trying to seek explanation of this contingency from the prosecution would not be a legitimate or proper expectation.

26. The attempt to throw a doubt as to the use of Ultra Violate Lamp during the course of drawing the second part of the panchanama is also not convincing. The complainant has accepted that when Ultra Violate Lamp was being used in a jeep car brought by the ACB Officials and for the purpose to have some darkness, the flap curtains of jeep car were unfolded and while examining and ascertaining the presence of anthracene powder marks on the hands of the accused, the complainant himself was outside the jeep car. This fact itself would not make the procedure of the test carried out by the Trapping Officer Mr. Patil under Ultra Violate Lamp doubtful. It is not in evidence that along with the complainant, panch No.1 was also out side the jeep car. On the contrary, the panch has stated that he had seen anthracene powder on the hands of the accused and other parts referred to in the panchanama. When the muddamal currency notes were with

the complainant as proved by the first part of the panchanama and oral evidence led by the complainant and the panch examined, the recovery of muddamal currency notes stained with anthracene powder from the accused established satisfactorily by the prosecution, would not make much difference on this count and it would not be possible for the Court to accept that the second part of panchanama should be thrown away by the Court observing as doubtful piece of evidence. The complainant has not stated that his hands were not stained at the time of drawing of second part of panchanama under Ultra Violate lamp. The evidence of the witnesses requires to be read as a whole and it would not be either legal or proper for the Court to condemn the witnesses by seeking out one or two conflicts or contradictions of minor or trivial nature. This Court finds no merit in the submission made by ld. Counsel Mr. Anandjiwala that the panch was especially selected person as he belongs to a particular department and some pressure can be brought on such panch so that he can depose as per the wish and desire of the Trapping Officer. Status of government servant of a particular department or his salary has little effect. It is true that the government officers have, normally, a tendency to favour the prosecution, but the defence should satisfactorily point out that the panch being a government servant has stated in favour of the prosecution and it is established by circumstances. The

defence should successfully establish such circumstances otherwise it would remain a bald allegation. Panch No.1 was tendered for a test by cross-examination and his veracity has been tested. The Court can not ignore the length of the cross-examination and the time taken for the purpose. When the witness has remained consistent on all material aspects during the detailed cross-examination on all aspects, it would not be either legal or proper for the Court to discard his evidence merely because he belongs to a particular department or is having a job in some lower cadre/class.

27. For short, I do not find any perversity or illegality in the finding of conviction recorded by the ld. Trial Judge and it is rightly submitted by ld. APP Mr. Pandit that the appeal deserves to be dismissed as the same is devoid of any merits. Hence, there is no merit in the appeal preferred by the appellant so far as his conviction recorded by ld. Trial Judge is concerned and the same deserves to be dismissed.

28. The alternative argument advanced by ld. Counsel Mr. Anandjiwala is that the court if is not inclined to quash the order of conviction, then at least should show a mercy by reducing the substantive sentence imposed by the Court. According to him, after conviction, a government servant would be dismissed from service and

not only the accused, but entire family would be deprived of all advantages flowing from the benevolent scheme introduced by the government. He has submitted that under Old Act, no minimum punishment is prescribed. That the accused is enjoying bail till date. So, the Court should show mercy by reducing the sentence. The submission made by Mr. Anandjiwala, ld. Counsel appearing for the appellant accused for reduction in sentence, has some force. It is true that the accused was a responsible employee of a police department. However, he is facing agony and mental tress since years. He must have been terminated by now on account of the conviction recorded by the trial Court way back in the year 1992 or thereafter and for the offence punishable under section 5(1)(d) R/w section 5(2) of the Prevention of Corruption Act (Old Act), no minimum punishment is prescribed. Under the circumstances, at least, this Court should reduce the period of substantive sentence. It would not be possible for this Court to impose a very light punishment because the order of punishment should carry the effective message to the society and there should be an element of some deterrence. The view should not be very liberal in such or similar cases. To some extent, the period of substantive sentence can be reduced. I am of the view that if substantive sentence is reduced to that of R/I for 1 month for the offences for which the appellant accused is convicted, would meet the ends of

justice. However, sentence of fine awarded in respect of the aforesaid offence also requires to be confirmed as the amount of fine has already been paid.

29. In the result, the present Criminal Appeal is partly allowed. The impugned judgment and order of sentence passed against the appellant accused for the offences punishable under section 5(2) read with section 5(i)(d) of the Prevention of Corruption Act (Old Act) and also under section 151 of the Indian Penal Code, is hereby confirmed. The sentence of fine imposed for the aforesaid offences is also hereby confirmed. However, the order of substantive sentence imposed in respect of aforesaid offences is reduced to the effect that so far as the offence punishable under section 5(i)(d) R/w Section 5(2) of the Prevention of Corruption Act (Old Act) is concerned, instead of the substantive sentence to undergo R/I for 6 months imposed for the said offence, the same is reduced and the appellant accused now shall undergo R/I for 1 month for the said offence. Sentence of Fine imposed in respect of aforesaid each offence, is hereby confirmed. No separate sentence so far as offence punishable under section 151 of Indian Penal Code is concerned, is awarded and to that extent the order passed by the ld. Trial Judge is confirmed.

30. The appellant accused was on bail pending trial and

at present also the appellant accused is enjoying bail in view of the order passed by this Court on 22.10.1992 and, therefore, appellant accused should be given some reasonable time to surrender. The appellant accused, therefore, is directed to surrender himself within six weeks from the date of this judgment before the trial Court to serve out the sentence, failing which the trial Court shall issue Non-Bailable Warrant to secure the presence of the accused so that he can be sent to jail to serve the sentence. Bail Bonds of the accused stand discharged.

[C.K. BUCH,J]

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